**S.B. Civil Writ Petition NO.2391/2004**

**Inder Mohan**

**vs**

**Jaswant Rai & Ors.**

**DATE OF ORDER** : - 1.4.2005.

**HON'BLE MR. PRAKASH TATIA,J.**

Mr.G.R.Goyal, for the petitioner.

**<><><>**

Heard learned counsel for the petitioner. Perused the impugned order by which the trial court consolidated two civil original suits no.65/99 and 82/2002.

The grievance of the petitioner is that suit no.65/99 reached to the stage of final arguments whereas in another suit no.82/2002, the evidence had not been completed till then, therefore,the court below could not have consolidated the two suits. It is also submitted that because of consolidation of the suits, the petitioner will be deprived from taking defence that in view of the Order 2 Rule 2 CPC, the relief, which has been sought by the plaintiff in suit no.65/99 shall stand abandoned or relinquished and second suit shall not be maintainable for the relief, which the plaintiff could have sought in the earlier suit and

which has not sought in earlier suit.

I considered the submissions of learned counsel for the petitioner. Undisputedly, the plaintiff filed the suit no.65/99 for partition of some properties and subsequently, filed the another suit for partition of some properties by impleading some more persons, who are purchasers of the property and plaintiff sought relief of declaration that property purchased by the purchaser also is ancestral property. According to petitioner, the property, which was not subject matter in the suit no.65/99, have been included in the subsequently filed suit. It appears that in some and substance there arises common questions of law and fact in the two suits and it is settled law that in case where anyone of the questions of fact or law involved in the suit is common, the court in its discretion may consolidate the suits. The delay in the suit, which reached to the stage of final arguments itself may not be a valid reason in all the cases to not to consolidate the suits.

In view of the above, when the trial court exercised its discretion within its jurisdiction and prima facie, this Court do not convince that petitioner is going to suffer any prejudice, therefore, this Court is not inclined to interfere in the impugned order under Article 227 of the Constitution of India.

Hence, the writ petition of the petitioner is dismissed. However, the trial court is requested to decide the suits expeditiously.

**(Prakash Tatia), J.**

c.p.goyal/-